Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-125

ALAMO LAND & CATTLE CO., INC., Petitioner,

v.

STATE OF ARIZONA, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	iii
OPINIONS BELOW.....	1
JURISDICTION.....	1
QUESTIONS PRESENTED	
1. Do *New Mexico-Arizona Enabling Act* provisions concerning school trust lands granted to Arizona that generally provide that no sale or other disposal of the land shall be for less than its full appraised value but do not provide who shall receive said proceeds and is silent about condemnation, require that upon condemnation by the United States of America of such land, Arizona's tenant, in spite of established condemnation principles recognizing a property right of the tenant that entitled the tenant in condemnation proceedings to receive the value of his leasehold interest, receive nothing for such interest under any circumstances?.....	2
2. Even if the *New Mexico-Arizona Enabling Act* requires that in a condemnation proceeding Arizona must receive the full value of lands transferred from it, is such requirement satisfied by evidence, as before the District Court below, that Arizona receive more than what the value would have been without the tenant's leasehold interest, and the tenant	

TABLE OF CONTENTS

	Page
received less than the enhancement of the value of the land because of the leasehold?	2
THE CONSTITUTIONAL PROVISIONS OR STATUTES INVOLVED	3
STATEMENT OF THE CASE	3
BASIS FOR FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE	6
REASONS FOR GRANTING THE WRIT	6
ARGUMENT OF REASON 1 AND 2 GRANTING WRIT AND QUESTION PRESENTED 1	7
ARGUMENT OF REASON 3 FOR GRANTING WRIT AND QUESTION PRESENTED 2	11
ARGUMENT FOR REASON 4 FOR GRANTING WRIT	12
CONCLUSION	14
CERTIFICATION	15
APPENDIX INDEX	-
APPENDIX	

TABLE OF AUTHORITIES

Page

CASES

A. W. Duckett & Co. v. United States,
266 U.S. 149, 45 S. Ct. 38,
69 L. Ed. 216 (1924) 6

Ehle v. Tenny Trading Co.,
56 Ariz. 241, 107 P.2d 210, 212..... 9

Lassen v. Arizona Highway Dept.,
385 U.S. 458, 87 S. Ct. 584
17 L. Ed. 2d 515 (1967) 5,8

McCandless v. United States,
298 U.S. 342, 56 S. Ct. 764,
80 L. Ed. 1205 (1936) 12

Nebraska v. United States,
164 F.2d 866 (9th Cir. 1947),
cert. denied, 344 U.S. 815 (1948)... 7,9,10

Olsen v. United States,
292 U.S. 246, 54 S. Ct. 704,
78 L. Ed. 1236 (1934) 12

State ex rel. State Highway
Commission v. Chavez,
80 N.M. 394, 456 P.2d 868 (1969).. 10

United States v. Fuller,
409 U.S. 488, 98 S. Ct. 801,
35 L. Ed. 2d 16 (1973) 12

United States ex rel. T.V.A. v. Powelson,
319 U.S. 266, 63 S. Ct. 1047,
87 L. Ed. 1390 (1943) 12

TABLE OF AUTHORITIES

Page

CONSTITUTION

Constitution of the United States:

5th Amendment..... 3,7,8,9,10,11,12
14th Amendment § 1..... 3

STATUTES

Federal Rules of Appellant Procedure

Rule 36..... 2

Public Law

89-299..... 6
534-78th Congress..... 6

United States Code

28 U.S.C. § 1254(1) (1966)..... 1
28 U.S.C. § 1358 (1962)..... 6
28 U.S.C. § 1403 (1962)..... 6
28 U.S.C. § 2101 (1959)..... 2
33 U.S.C. § 591 (1970)..... 6
33 U.S.C. § 701 (1970)..... 6
40 U.S.C. § 258a (1969)..... 6

36 U.S. Stat. 557, 568-579 (1910)..... 3

Arizona Revised Statutes

New Mexico-Arizona Enabling Act

§ 24..... 3,9,10,12,13
§ 28..... 3,9,10,12,13

TABLE OF AUTHORITIES

Page

STATUTES

Arizona Revised Statutes (Contd.)

§ 37-291 (1956) 3
§ 41-511.06 (Supp. 1973) 3,9

Nebraska Statutes

Nebraska Enabling Act 10

TEXTS AND TREATISES

2 Nichols on Eminent Domain

§ 5.23[2] 10

4 Nichols on Eminent Domain

§ 12.36[1] 12
§ 12.42[1] 10
§ 12.314 11

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FOR THE NINTH CIRCUIT

OPINIONS BELOW

Attached as Appendix A is the opinion of the Court below which is by the Court of Appeals for the Ninth Circuit.

JURISDICTION

Jurisdiction of the United States Supreme Court is invoked under 28 *U.S.C.* § 1254(1) (1966), which permits the United States Supreme Court to issue a writ of certiorari to the United States Court of

Appeals. The judgment sought to be reviewed is dated March 28, 1974 [Appendix A] and pursuant to *Rule 36* of the *Federal Rules of Appellant Procedure* was entered on that date, but as contemplated by *28 U.S.C.* § 2101 (1959), this Writ of Certiorari is timely because it is filed within ninety (90) days from May 17, 1974, the date of denial by the United States Court of Appeals for the Ninth Circuit of Petitioner's petition for rehearing to that court.

QUESTIONS PRESENTED

1. Do *New Mexico-Arizona Enabling Act* provisions concerning school trust lands granted to Arizona that generally provide that no sale or other disposal of the land shall be for less than its full appraised value but do not provide who shall receive said proceeds and are silent about condemnation, require that upon condemnation by the United States of America of such land, Arizona's tenant, in spite of established condemnation principles recognizing a property right of the tenant that entitles the tenant in condemnation proceedings to receive the value of his leasehold interest, receive nothing for such interest under any circumstances?

2. Even if the *New Mexico-Arizona Enabling Act* requires that in a condemnation proceeding Arizona must receive the full value of lands transferred from it, is such requirement satisfied by evidence, as before the District Court below, that Arizona received more than what the value would have been without the tenant's leasehold interest, and the tenant received less than the enhancement of the value of the land because of the leasehold?

THE CONSTITUTIONAL PROVISIONS OR STATUTES INVOLVED

U.S.C. Constitution Amendment 5 (1972); *U.S.C. Constitution Amendment* 14 § 1 (1961); § 24 and § 28 of *New Mexico-Arizona Enabling Act*, said *Enabling Act* being found at *36 U.S. Stat.* 557, 568-579 (1910) and in *Volume 1, Arizona Revised Statutes* (1956) at 79-98; part of *Volume 12, Arizona Revised Statutes* § 37-291 (1956); and *Volume 12, Arizona Revised Statutes* § 41-511.06 (Supp., 1973). These are verbatim set forth in Appendix B.

STATEMENT OF THE CASE

The United States of America condemned two sections of land owned by the State of Arizona in trust pursuant to § 28 of the *New Mexico-Arizona Enabling Act*. At the time of the condemnation, as specifically allowed by said section, a lease was in existence between Arizona and Petitioner. Both Petitioner, the lessee, and Arizona, agreed that the amount tendered by the United States of America to the Federal Registry at the time of the taking by the United States of America was reasonable. This sum was $48,220 for one section and $70,400 for the other, or total of $118,620. Evidence was received by the District Court for the District of Arizona at a distribution hearing held to determine the respective entitlement to the condemnation monies by Petitioner and Arizona. Arizona's position was that it was entitled to the full amount on deposit, less only $3,600 that represented the present value of physical improvements by Petitioner. Petitioner contended, to quote a part of the written opinion of the District Court, that "the true value of the premises would be reflected in the use of the premises in connection with other properties owned or controlled by Alamo [Petitioner] as a cattle ranch; that the

property would otherwise be relatively, of no value." Consequently Petitioner contended that pursuant to established federal law condemnation principles, it was entitled to receive a share of the nonimprovement condemnation monies at issue, $115,020, which it alternatively claimed was the difference between the full market value of the property and the value of the lessor's interest or the amount of the enhancement of the value of the property solely because of its leasehold, to-wit: the difference between the value of the property with the leasehold and what it would have been without the leasehold.

At trial, Arizona's appraiser explained the following statement contained in the appraisal of the United States of America. The statement was, "Consequently, the market value of these river bed lands is inseparable from their usefulness in connection with the dry grazing areas on both sides of the river, which desert areas are useful only when water, livestock control, and dependable forage can be relied upon." The answer was "As I understand the statement, he gave consideration to the fact that the state lease land is a part of an operating unit and has value because it serves as a part of that unit with the dependable irrigated forage . . ." Transcript of record, at 86-87. The same appraisal contained a statement "Tenure has been stable even when the lessees have cancellation clauses and termination dates. Preference for renewal has been both officially sanctioned and practiced as a custom." The State's appraiser conceded such "...is exactly in accordance with the information given me by these five gentlemen [former land commissioners] of long experience and it is my understanding of the way matters have been handled." Transcript of Record 87. Petitioner's evidence supported this increase in value. Its appraiser said that the two sections, as isolated sections and without consideration to its actual use as part of Petitioner's cattle operation, would be worth a total of only $40,000 to $50,000.

The evidence showed that Petitioner's headquarters was in proximity to the two state lease sections and cattle were rotated between the two sections, which had little but some water, and Petitioner's irrigated farmland next to a river that had a tremendous water supply, as proved by the very condemnation of the United States of America which was for the purposes of a water storage dam.

Petitioner's appraiser testified to facts to support the conclusion that the remote and isolated subject property, scores of miles from any substantially populated community and only accessable by dirt road, but for the condemnation, at the end of its lease term, six years, would at least have had one more ten year renewal. On a sixteen year basis, he then capitalized both the rental value and the reversion to determine Arizona's paramount interest to be $57,970 and determined Petitioner's leasehold to be $57,049. The District Court, by judgment, adopted these figures, except that it awarded a missing dollar to Petitioner of $57,050. Thus, Arizona received more than the $40,000 the land would have been worth without the enhancement in value from the leasehold.

Arizona appealed to the United States Court of Appeals for the Ninth Circuit, which by the opinion attached as Appendix A, reversed, awarding both sums to Arizona, $115,020.

The Bureau of Land Management tables reproduced in Appendix C show the vast number of school trust lands throughout the United States. They total 77,629,220 acres! *Lassen v. Arizona Highway Dept.*, 385 U.S. 458, 87 S. Ct. 584, 17 L. Ed. 2d 515 (1967), in footnotes 2 and 3, agrees with this table as to Arizona's total, and the national total by stating, respectively, 8,000,000 acres and 78,000,000 acres. Appendix D shows Arizona now has vested title to 8,156,380.18 acres of school trust land.

The United States of America has not been named a respondent because it did not actively participate in the distribution hearing before the District Court nor in the appellate proceedings before the Court of Appeals for the Ninth Circuit. Nevertheless, as a courtesy, three copies of this petition have been sent to the Solicitor General, Department of Justice.

BASIS FOR FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE

28 U.S.C. § 1358 (1962) and *28 U.S.C.* § 1403 (1962) confer original jurisdiction of condemnation proceedings to the District Court of the United States in the district where the land is located, which was the United States District Court for the District of Arizona. Authorization for the condemnation proceedings by the United States is found in *40 U.S.C.* § 258a (1969) and act supplementary and amendatory thereto, in *33 U.S.C.* § 591 (1970) and *33 U.S.C.* § 701 (1970) and in *Public Law 534-78th Congress* which authorized construction of the Alamo reservoir and *Public Law 89-299* which appropriated funds for construction of such reservoir.

REASONS FOR GRANTING THE WRIT

1. The decision below, in determining that Petitioner is not entitled to any compensation for its leasehold interest, conflicts with the unanimous condemnation principle as evidenced in *A. W. Duckett & Co. v. United States*, 266 U.S. 149, 45 S. Ct. 38, 69 L. Ed. 216 (1924), that in condemnation a lessee is entitled to compensation for damage to his leasehold just as the lessor is entitled to damage to his reversionary interest.

2. The decision below in determining that Petitioner is not entitled to any compensation for its leasehold interest upon condemnation by the United States of America because the subject lands were owned by the state [Arizona here] for school trust fund purposes directly conflicts with *Nebraska v. United States*, 164 F.2d 866 (8th Cir. 1947), *cert. denied*, 334 U.S. 815 (1948), which requires that school trust lands upon condemnation must be treated as any other property and the lessee is entitled to compensation from the award for his leasehold interest.

3. The decision below fails to recognize that even if, upon condemnation of state school trust lands, the state must receive its full appraised value, such does not preclude the state's lessee from receiving the amount that the leasehold has enhanced the value of the property beyond what it would have been worth had there been no lease. This conflicts with every condemnation principle emanating from the *5th Amendment* to the *Constitution of the United States of America* announced by this Court and the Court of Appeals.

4. Settlement of these questions, which have not yet been settled by this Court, is necessary because many citizens are affected by the decision below because the various states have been granted 77,629,220 acres of school trust fund lands and in addition, if such lessees are not entitled to compensation, they will lose present financing.

ARGUMENT OF REASON 1 AND 2 FOR GRANTING WRIT AND QUESTION PRESENTED 1

The opinion below attempted to avoid the *Fifth Amendment* which it recognized would ordinarily require Petitioner to receive just compensation for its leasehold interest by saying that "How-

ever, under the *Enabling Act*, Arizona, as trustee, had no power to grant a compensable property right to Alamo [Petitioner]". Laconically, the reasoning was that Arizona held the lands as trustee and the trust would be violated if it received less than the full value of the fee and to hold otherwise would be in contravention of *Lassen v. Arizona Highway Dept.*, 385 U.S. 458, 87 S. Ct. 584, 17 L. Ed. 2d 515 (1967). Although *Lassen* specifically stated that "the *Enabling Act* unequivocably demands both that the trust receive the full value of any land transferred from it and that any funds received be employed only for the purpose for which the land was given" [87 S. Ct. 588], *Lassen* did not consider the *Fifth Amendment* right of a state lessee. *Lassen* determined that upon condemnation of these trust lands by Arizona, Arizona must pay full value to the school trust. Neither *Lassen* nor any other decision of this Court has determined that under such circumstances the lessee is not entitled to its leasehold interest. The question then becomes whether an *Enabling Act* [Arizona's] which provides that when the four trust lands . . . are offered for sale they must be "appraised at their true value," and that "no sale or other disposal . . . shall be made for a consideration less that the value so ascertained . . . ." [*Lassen*, 87 S. Ct. 588, 589] and also provides for leasing the property, but which is silent about condemnation, means that upon condemnation the *Fifth Amendment* is satisfied if the lessee receives nothing for his leasehold interest.[1] While said provision just quoted requires condemnation by the state of trust fund lands, because literally applied it requires that upon disposition of the land, an appraised true value be paid, the provision does not say who the funds shall be paid to. It does not say only to Arizona.

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1 Herein leasehold interest is distinguished from the value of improvements which was $3,600.

Contrary to the position below, the appropriate portion of the *Arizona Enabling Act*, § 28 [Appendix B] specifically permist leasing. Nowhere does said section or any other provision of the *Arizona Enabling Act* [see *Volume 1, Arizona Revised Statutes* (1956), at 79, 98] provide what happens upon condemnation. The problem of compensation of a leasehold interest was before the United States Court of Appeals, Eighth Circuit, in *Nebraska v. United States*, 164 F.2d 866 (8th Cir. 1947) *cert. denied*, 334 U.S. 315 (1948), which recognized that:

> "It [the *Nebraska Enabling Act*] did not agree that, should condemnation of such land subsequently become necessary for sovereign purposes, it would take more than the fair market value of the land in compensation. It did not assume to save the state harmless in such a situation from a diminution of the market value of the state's rights through the creation of a leasehold, easement, or other interest in the land by the state's own acts." 164 F.2d at 869

Arizona has recognized that the interest of a lessee in school trust land and his preferred right to renewal "is a valuable, substantial right." *Ehle v. Tenny Trading Co.*, 56 Ariz. 241, 107 P.2d 210, 212. The reason was that not "to recognize equities in those who have built up a ranching business. . . would be injurious if not destructive to that industry." *Ehle*, 107 P.2d at 212. Additionally, the Arizona Legislature thought, as expressed in *12 Arizona Revised Statutes* § 41-511.06 (Supp. 1973), Appendix B, that upon condemnation, obviously because of the *Fifth Amendment* to the *United States Constitution*, a state lessee was entitled to "fair and adequate compensation for the cost and damage to his property interest or loss of his lease. . . ."

New Mexico is in accord as shown by *State ex rel. State Highway Commission v. Chavez*, 80 N.M. 394, 456 P.2d 868 (1969), wherein the New Mexico Supreme Court said that to not allow compensation for the leasehold interest "would be of questionable constitutionality as permitting the taking or damaging of property without the payment of just compensation." 456 P.2d at 873.

Based upon this analyzation, the opinion below and the opinion in *Nebraska v. United States*, 164 F.2d 866 (8th Cir. 1947) *cert. denied*, 334 U.S. 815 (1948) are in direct opposition. Neither the *Nebraska Enabling Act* nor the *New Mexico-Arizona Enabling Act* provide anything about whether a lessee receives just compensation for his leasehold interest upon condemnation. *Nebraska*, in recognition of the *Fifth Amendment*, as above, said *Nebraska's Enabling Act* "did not assume to save the state harmless" in condemnation "from a diminution in the market value of the state's rights through the creation of a leasehold. . . ." 164 F.2d at 869 Although this is recognition of the fact that an *Enabling Act* could have so provided by in essence setting forth the same thing as a condemnation clause in a lease wherein it is provided that, upon the taking by eminent domain of the whole or a part of the premises leased the term shall come to an end or the lessee shall receive nothing upon condemnation [see *4 Nichols on Eminent Domain* §12.42[1] at 12-488, 489], neither the *Nebraska* nor the *New Mexico-Arizona Enabling Act* so provided. Consequently, the *Fifth Amendment* does require that Alamo's leasehold interest be recognized. This is to say that since denial of the state lessees right to receive just compensation for his leasehold interest is to work a forfeiture, such denial will not be implied, but only effected when no other result is possible. *2 Nichols on Eminent Domain* §5.23[2] at 5-94 wherein it is stated:

"It has been held that the law does

> not look with favor on clauses causing forfeiture of the lessee's interest on condemnation, hence, a lease covenant will be construed not to have that effect if its language and the circumstances possibly permit."

ARGUMENT OF REASON 3 FOR GRANTING WRIT AND QUESTION PRESENTED 2

Even if it be decided that the *Fifth Amendment* be satisfied by determining that the state, as the trustee of school land, upon condemnation must receive the full appraised value of the land, can such logic be stretched to mean that the state should receive a windfall by receiving more than it would have received had the land not been leased? The statement of facts shows that the appraisal of the United State of America was based upon enhancement of the market value of the property because it was being used by the lessee in combination with lands belonging to the lessee (petitioner). This is in accord with recognized condemnation law. *4 Nichols on Eminent Domain* §12.314 pp. 12-216, 217 states:

> "Thus, where the adaptability for a specific use depends upon the land being used in combination with lands belonging to other persons, such use may be shown if the possibility of such combinations is so great as to have a definite effect in enhancing the market value of the property."

United States Supreme Court's decisions cited in the footnote in support of this statement are *Olsen*

v. *United States*, 292 U.S. 246, 54 S. Ct. 704, 78 L. Ed. 1236 (1934); *McCandless* v. *United States*, 298 U.S. 342, 56 S. Ct. 764, 80 L. Ed. 1205 (1936); *United States ex rel. T.V.A.* v. *Powelson*, 319 U.S. 266, 63 S. Ct. 1047, 87 L. Ed. 1390 (1943); *United States* v. *Fuller*,[2] 409 U.S. 488, 98 S. Ct. 801, 35 L. Ed. 2d 16 (1973). Because condemnation does "seek the value of 'the fee as a whole'" the law does permit "proof of the enhancing value of the lease." *4 Nichols on Eminent Domain* §12.36[1] p. 12-435. There was ample evidence that this is all that petitioner received. There is no legal theory or precedent that would require an implication from or interpretation of the *New Mexico-Arizona Enabling Act* that would deny a lessee of his *Fifth Amendment* right to receive the enhancement of the fee solely and only resulting from the leasehold.

ARGUMENT OF REASON 4 FOR GRANTING WRIT

This is not an isolated evidentiary matter peculiar to petitioner. A perusal of the *Enabling Acts* of the various states will show that ordinarily only a few sections per township were designated as school trust lands. In the arid southwest, as recognized by the appraiser for the United States of America [see *Statement of Facts*], the state lease lands are operated by the various lessees in conjunction with other property owned by the lessee The very enhancement of value of the land at issue herein was because the lands were close to peti-

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2 The subject land there is adjacent to Petitioners. If the decision below stands, petitioner and those similarly situated will lose, upon condemnation, not only any enhancement of the value of their fee lands because of their Taylor Grazing permits, but the value of their leasehold interests in school trust lands leased from a state.

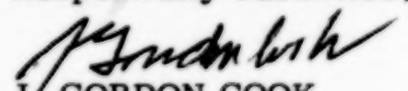
tioner's headquarters and more cattle could be grazed upon the subject lands than otherwise because of rotation with irrigated grazing land adjacent to petitioner's headquarters. Otherwise such land would have been of little value or less than half of what the United States of America deposited in the federal registry. The attached inventory of lands held in trust by the Arizona State Land Department [Appendix D], 10,648,207.63, and information contained in amicus curiae briefs that the number of school trust land in New Mexico leased for grazing purposes is in excess of 9,000,000 acres, and the filing of an amicus curiae brief by the White Sand Ranchers Association concerning thousands of state leased acreages under condemnation involving 120 families and 50 ranchers, establishes that the determination of the questions presented herein is and will be important to many citizens.

The importance is not limited to condemnation, because the amicus curiae briefs expected to be filed by the State of New Mexico and various Production Credit Associations, the Federal Land Bank of Wichita and the Intermediate Credit Bank of Wichita shows that if the opinion below stands, obtaining financial funds upon the security of an assignment or a mortgage of an interest in state leases, permitted by the *New Mexico-Arizona Enabling Act*, will no longer be available. The whole purpose of obtaining school trust funds from leasing such lands will be thwarted. This financing loss will include the more valuable lands leased for agricultural leases for which more rent is charged. The result will be detrimental to the school trust fund purpose by destroying the ability of many lessees to lease such lands.

CONCLUSION

For all of the reasons set forth above, Petitioner requests the Supreme Court of the United States of America, by a writ of certiorari, to review the judgment and opinion of the Court of Appeals for the Ninth Circuit that is attached hereto as Appendix A.

Respectfully submitted,



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Attorney for Petitioner

CERTIFICATION

J. Gordon Cook, being duly admitted to practice before the Supreme Court of the United States of America, herewith certifies that three copies of the petition have been delivered to the State of Arizona by depositing the same in the office of the attorney for the State of Arizona who appeared below in the District Court and the United States Court of Appeals for the Ninth Circuit, to-wit: Peter C. Gulatto, Assistant Attorney General, State of Arizona, State House, Phoenix, Arizona, 85007.

Additionaly, as a courtesy, I herewith certify that service of three copies of this petition has been made upon the United States of America by depositing the same in United States mailbox, with first class postage prepaid, addressed to the Solicitor General, Department of Justice, Washington, D.C. 20530.

J. Gordon Cook

APPENDIX INDEX

	Page
APPENDIX A:	
Opinion - (9th Cir. 1974) No. 72-2628.	A-1
APPENDIX B:	
CONSTITUTION	
AMENDMENT V-CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY.....	A-7
AMENDMENT XIV-CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT.....	A-7
ENABLING ACT	
Sec. 24.....	A-8
Sec. 28.....	A-9
ARIZONA REVISED STATUTES	
§ 37-291.....	A-13
§ 41-511.96. Eminent domain.....	A-14
APPENDIX C	
Table 4. Grants to States, 1803-1972..	A-16
APPENDIX D	
Inventory of lands held in trust by the State Land Department.....	A-18

APPENDIX A

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

and

ALAMO LAND & CATTLE CO., INC.,

Defendant-Appellee,

v.

2,562.92 ACRES OF LAND, More or Less, situate in YUMA and MOHAVE COUNTIES, STATE of ARIZONA,

Defendant- Appellant.

NO. 72-2628

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

March 28, 1974

OPINION

Before DUNIWAY and WALLACE, Circuit Judges, and FERGUSON,* District Judge.

FERGUSON, District Judge:

* The Honorable Warren J. Ferguson, United States District Judge for the Central District of California, sitting by designation.

This is an appeal by the State of Arizona from a judgment in a condemnation proceeding awarding the Alamo Land and Cattle Co., Inc. monetary damages for its leasehold interests. We reverse.

The United States filed a condemnation action in the district court. Included in the property sought to be condemned were two parcels designated as tracts 304 and 305.

Those tracts are a part of the grant to the State of Arizona by the United States under the New Mexico-Arizona Enabling Act (Act of June 20, 1910, 36 U.S. Stat. 557, as amended June 2, 1951, 65 Stat. 50.) The lands were granted for the support of public schools and are subject to the restrictions set forth in § 28 of the Act, A.R.S.

Prior to the condemnation action the tracts had been leased by Arizona to Alamo under a ten year grazing lease.

After the filing of the action, Arizona and Alamo stipulated with the United States that the full just compensation for the taking of the two tracts, together with all improvements thereon, was the sum of $118,620.

Thereafter a distribution hearing was held by the district court. At that hearing the only parties who appeared claiming an interest in the award were Arizona and Alamo. Alamo claimed a compensable leasehold interest in the land as well as a compensable interest in the improvements. Arizona conceded that Alamo was entitled to receive the value of the improvements which Alamo had constructed on the property but claimed that Alamo had no right to participate in the award for any land value.

After the hearing, the district court awarded Arizona the sum of $57,970 for its fee interest in the

property and awarded to Alamo the sums of $3,600 for its improvements and $57,050 for its present leasehold interest as well as reasonably prospective future leasehold interest. We hold that Alamo is entitled only to the value of its improvements.

The Enabling Act and Section 28 are described and interpreted in Lassen v. Arizona Highway Dept., 385 U.S. 458, 87 S.Ct. 584, 17 L.Ed.2d 515 (1967). As stated therein "the Act described with particularity the disposition Arizona may make of the lands and of the funds derived from them. . . ." Furthermore, "the Act imposes two sanctions upon transactions which fail to satisfy its requirements. First, § 28 provides broadly that trust lands must be 'disposed of in whole or in part only in manner as herein provided . . .' It adds that 'Disposition of any of said lands . . . in any manner contrary to the provisions of this Act, shall be deemed a breach of trust.' Finally, it provides that 'Every sale, lease, conveyance, or contract of or concerning any of the lands hereby granted or conferred . . . not made in substantive conformity with the provisions of this Act shall be null and void' . . . ." 385 U.S. 462, 87 S.Ct. 586.

Arizona accepted the lands pursuant to Article X of its Constitution, A.R.S. Section 1 of that article provides that all lands transferred pursuant to the Enabling Act "shall be by the State accepted and held in trust to be disposed of in whole or in part, only in the manner as in said Enabling Act . . . provided . . . ."

The State of Arizona has argued that Alamo is not entitled to any compensation except for its improvements by reason of the following:

1. The lease specifically provided that:

a. It was made subject to the laws of Arizona.

b. In the event the State relinquished the property to the United States, then the lease shall be null and void as it may pertain to the land so relinquished.

c. No provision of the lease shall create any vested right in the lessee.

2. Sections 37-242 and 37-293 of the Arizona Revised Statutes restrict a lessee's participation in the proceeds of a sale of public land to the value of improvements.

We do not find it necessary, however, to determine the rights of Alamo based upon these lease provisions or the state law.

Section 28 of the Enabling Act provides in part: "Nothing herein contained shall prevent . . . (4) the Legislature of the State of Arizona from providing by proper laws for the protection of lessees of said lands, whereby such lessees shall be protected in their rights to their improvements (including water rights) in such manner that in case of lease or sale of said lands to other parties the former lessee shall be paid by the succeeding lessee or purchaser the value of such improvements and rights placed thereon by such lessee." That provision and other provisions of Section 28 which provide (1) the lands shall be held in trust (2) can be disposed of only as set forth in the Act (3) the money proceeds shall be held in trust (4) no mortgage or encumbrance shall be valid in favor of any person, for any purpose, or any circumstance whatsoever and (5) no lands shall be sold for less than their appraised value, require this court to hold that the district court was in error in awarding Alamo a part of the appraised value of the land.

This holding is specifically required by *Lassen* where the Court stated "[t]he Enabling Act unequivocally demands both that *the trust receive the full*

value of any lands transferred from it, and that any funds received be employed only for the purposes for which the land was given. . . . [I]t requires that before trust lands . . . are offered for sale they must be 'appraised at their true value' and . . . 'no sale or other disposal . . . shall be made for a consideration less than the value so ascertained. . .'" 385 U.S. 466, 467, 87 S.Ct. 588, 589. (Emphasis added.)

The Court then states "All these restrictions [in the Enabling Act] in combination indicate Congress' concern both that the grants provide the most substantial support possible to the beneficiaries and that only those beneficiaries profit from the trust." 385 U.S. 467, 87 S.Ct. 945.

The Fifth Amendment provides that private property may not be taken for a public use without just compensation. See United States v. Fuller, 409 U.S. 488, 93 S.Ct. 801, 35 L.Ed.2d 16 (1973). That provision would guarantee to Alamo the right to compensation if they had obtained from Arizona a property right superior to or equal to the trust. However, under the Enabling Act, Arizona, as trustee, had no power to grant a compensable property right to Alamo. Alamo therefore never acquired a property right for which it is entitled to compensation.

Alamo contends that Nebraska v. United States, 164 F.2d 866 (8th Cir. 1947) requires that school trust lands must be treated as any other private property and compensation for such lands taken by condemnation must be allocated or apportioned between the state and its lessee on the basis of their relative values. The court in that case held that the apportionment of the fair market value of lands which had been granted to Nebraska by its Enabling Act "for the support of common schools" must be the general federal rule of compensation for condemnation. Under that rule, the cash award must

be allocated or apportioned among the respective estates or interests on the basis of their relative values.

Nebraska v. United States, however, is not applicable here by reason of Section 28 of the Arizona Enabling Act as interpreted in *Lassen*. Furthermore, the Nebraska Enabling Act does not contain the express restrictions which are incorporated in the Arizona Act. United States v. 78.61 Acres of Land, 265 F.Supp. 564 (D.C.Neb.1967). Therefore Nebraska v. United States, *supra*, clearly is distinguishable.

The judgment of the district court awarding compensation to Alamo for its leasehold interests in the land is reversed, and the cause is remanded to the district court to enter a judgment in accordance with the provisions of this opinion.

APPENDIX B

CONSTITUTION

AMENDMENT V-CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV-CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

. . .

Sec. 24. That in addition to sections sixteen and thirty-six heretofore reserved for the Territory of Arizona, sections two and thirty-two in every township in said proposed State not otherwise appropriated at the date of the passage of this Act are hereby granted to the said State for the support of common schools; and where sections two, sixteen, thirty-two, and thirty-six, or any part thereof, are mineral, or have been sold, reserved, or otherwise appropriated or reserved by or under the authority of any Act of Congress, or are wanting or fractional in quantity, or where settlement thereon with a view to pre-emption or homestead, or improvement thereof with a view to desert-land entry has been made the survey thereof in the field, the provisions of sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes, and Acts amendatory thereof or supplementary thereto,[1] are hereby made applicable thereto and to the selection of lands in lieu thereof to the same extent as if sections two and thirty-two, as well as sections sixteen and thirty-six, were mentioned therein: *Provided, however,* that the area of such indemnity selections on account of any fractional township shall not in any event exceed an area which, when added to the area of the above-named sections returned by the survey as in place, will equal four sections for fractional townships containing seventeen thousand two hundred and eighty acres or more, three sections for such townships containing eleven thousand five hundred and twenty acres or more, two sections for such townships containing five thousand seven hundred and sixty acres or more, nor one section for such townships containing six hundred and forty acres or more: *And provided further,* that the grants of sections two, sixteen, thirty-two, and thirty-six to

1 See 43 U.S.C.A. §§ 851, 852.

said State, within national forests now existing or proclaimed, shall not vest the title to said sections in said State until the part of said national forests embracing any of said sections is restored to the public domain; but said granted sections shall be administered as a part of said forests, and at the close of each fiscal year there shall be paid by the Secretary of the Treasury to the State, as income for its common school fund, such proportion of the gross proceeds of all the national forests within said State as the area of lands hereby granted to said State for school purposes which are situated within said forest reserves, whether surveyed or unsurveyed, and for which no indemnity has been selected, may bear to the total area of said sections when unsurveyed to be determined by the Secretary of the Interior, by protraction or otherwise, the amount necessary for such payments being appropriated and made available annually from any money in the Treasury not otherwise appropriated.

Sec. 28. That it is hereby declared that all lands hereby granted, including those which, having been heretofore granted to said Territory, are hereby expressly transferred and confirmed to the said State, shall be by the said State held in trust, to be disposed of in whole or in part only in manner as herein provided and for the several objects specified in the respective granting and confirmatory provisions, and that the natural products and money proceeds of any of said lands shall be subject to the same trusts as the lands producing the same.

Disposition of any of said lands, or of any money or thing of value directly or indirectly derived therefrom, for any object other than for such particular lands, or the lands from which such money or thing of value shall have been derived, were granted or confirmed, or in any manner contrary to the provisions of this Act, shall be deemed a breach of trust.

No mortgage or other encumbrance of the said lands, or any part thereof, shall be valid in favor of any person or for any purpose or under any circumstances whatsoever. Said lands shall not be sold or leased, in whole or in part, except to the highest and best bidder at a public auction to be held at the county seat of the county wherein the lands to be affected, or the major portion thereof, shall lie, notice of which public auction shall first have been duly given by advertisement, which shall set forth the nature, time, and place of transaction to be had, with a full description of the lands to be offered, and be published once each week for not less than ten successive weeks in a newspaper of general circulation published regularly at the state capital, and in that newspaper of like circulation which shall then be regularly published nearest to the location of the lands so offered; nor shall any sale or contract for the sale of any timber or other natural product of such lands be made, save at the place, in the manner, and after the notice by publication provided for sales and leases of the lands themselves. Nothing herein contained shall prevent: (1) the leasing of any of the lands referred to in this section, in such manner as the Legislature of the State of Arizona may prescribe, for grazing, agricultural, commercial, and domestic purposes, for a term of ten years or less; (2) the leasing of any of said lands, in such manner as the Legislature of the State of Arizona may prescribe, whether or not also leased for grazing and agricultural purposes, for mineral purposes, other than for the exploration, development, and production of oil, gas, and other hydrocarbon substances, for a term of twenty years or less; (3) the leasing of any said lands, whether or not also leased for other purposes, for the exploration, development, and production of oil, gas and other hydrocabor substances on, in, or under lands for an initial term of twenty years or less and as long thereafter as oil, gas, or other hydrocarbon substance may be produced therefrom in paying quantities, the leases

to be made in any manner, with or without advertisement, bidding, or appraisement, and under such terms and provisions as the Legislature of the State of Arizona may prescribe, the terms and provisions to include a reservation of a royalty to said State of not less that 12½ per centum of production; or (4) the Legislature of the State of Arizona from providing by proper laws for the protection of lessees of said lands, whereby such lessees shall be protected in their rights to their improvements (including water rights) in such manner that in case of lease or sale of said lands to other parties the former lessee shall be paid by the succeeding lessee or purchaser the value of such improvements and rights placed thereon by such lessee. As amended June 5, 1936, c. 517, 49 Stat. 1477; June 2, 1951, c. 120, 65 Stat. 51.

All lands, leaseholds, timber and other products of land, before being offered, shall be appraised at their true value, and no sale or other disposal thereof shall be made for a consideration less than the value so ascertained, nor upon credit unless accompanied by ample security, and the legal title shall not be deemed to have passed until the consideration shall have been paid. As amended June 5, 1936, c. 517, 49 Stat. 1477.

No lands shall be sold for less than their appraised value, and no lands which are or shall be susceptible of irrigation under any projects now or hereafter completed or adopted by the United States under legislation for the reclamation of lands, or under any other project for the reclamation of lands, shall be sold at less than twenty-five dollars per acre: *Provided*, that said State, at the request of the Secretary of the Interior, shall from time to time relinquish such of its lands to the United States as at any time are needed for irrigation works in connection with any such government project. And other lands in lieu thereof are hereby granted to said State, to be selected from lands of the character

named and in the manner prescribed in section twenty-four of this Act. As amended June 5, 1936, c. 517, 49 Stat. 1477.

The State of Arizona is authorized to exchange any lands owned by it for other lands, public or private, under such regulations as the legislature thereof may prescribe: *Provided*, That such exchanges involving public lands may be made only as authorized by Acts of Congress and regulations thereunder. Added June 5, 1936, c. 517, 49 Stat. 1477.

There is hereby reserved to the United States and excepted from the operation of any and all grants made or confirmed by this act to said proposed State all land actually or prospectively valuable for the development of water power or power for hydro-electric use or transmission and which shall be ascertained and designated by the Secretary of the Interior within five years after the proclamation of the President declaring the admission of the State; and no land so reserved and excepted shall be subject to any disposition whatsoever of said State, and any conveyance or transfer of such land by said State or any officer thereof shall be absolutely null and void within the period above named; and in lieu of the land so reserved to the United States and excepted from the operation of any of said grants there be, and is hereby, granted to the proposed State an equal quantity of land to be selected from land of the character named and in the manner prescribed in section twenty-four of this Act.

A separate fund shall be established for each of the several objects for which the said grants are hereby made or confirmed, and whenever any moneys shall be in any manner derived from any of said land the same shall be deposited by the state treasurer in the fund corresponding to the grant under which the particular land producing such moneys

was by this Act conveyed or confirmed. No money shall ever be taken from one fund for deposit in any other, or for any object other than that for which the land producing the same was granted or confirmed. The state treasurer shall keep all such moneys invested in safe, interest-bearing securities, which securities shall be approved by the govenor and secretary of state of said proposed State, and shall at all times be under a good and sufficient bond or bonds conditioned for the faithful performance of his duties in regard thereto, as defined by this Act and the laws of the State not in conflict herewith.

Every sale, lease, conveyance, or contract of or concerning any of the lands hereby granted or confirmed, or the use thereof or the natural products thereof, not made in substantial conformity with the provisions of this Act shall be null and void, any provisions of the constitution or laws of the said State to the contrary notwithstanding. It shall be the duty of the Attorney General of the United States to prosecute, in the name of the United States and in its courts, such proceedings at law or in equity as may from time to time be necessary and appropriate to enforce the provisions hereof relative to the application and disposition of the said lands and the products thereof and the funds derived therefrom.

Nothing herein contained shall be taken as in limitation of the power of the State or of any citizen thereof to enforce the provisions of this Act.

ARIZONA REVISED STATUTES

§ 37-291

A. Upon application to the state land department

not less than thirty nor more than sixty days prior to the expiration of a lease of state lands, the lessee, if he is a bona fide resident of the state, shall have a preferred right to renewal, bearing even date with the expiration of the old lease, for a term not longer than ten years, as determined by the department, at a reappraised rental.

B. . . .If the department determines the continued leasing of the land not in the best interest of the state, the lease shall not be renewed.

§ 41-511.06. Eminent domain

A. In acquiring property by eminent domain, no water, watering facilities or water right of any person shall be taken separate and apart from the land served by such water, watering facilities or water rights, without fair and adequate compensation to be awarded for such land and water, watering facilities or water rights.

B. In seeking to establish a state park or monument on state or federally owned land, the board shall not request the termination or cancellation of any valid lease, permit, government land entry, mining claim, privilege or other right unless fair and adequate compensation is awarded to the holder of such lease, permit, privilege or other right. If the amount of the compensation cannot be determined by agreement, the board may proceed to cause such lease, permit, privilege, government land entry, mining claim or right to be terminated or cancelled if such can be lawfully done by the state or federal agency having jurisdiction thereof, or the board may proceed to acquire the same by eminent domain. In any event the holder of such lease, permit, privilege, government land entry, mining claim or right shall receive fair and adequate compensation for the cost of and damage to his property interest or loss of his lease, privilege, government

land entry, mining claim or permit. In determining the amount of such compensation, consideration shall be given to any preferential rights of renewal and other preferential rights of the owner or holder thereof, the damage to the remaining land, damage by access roads, and damage to the rights and operation which such owner may have and all other relevant factors. Added Laws 1957, Ch. 99, § 1.

APPENDIX C

TABLE 4.—*Grants to States, 1803-1972*

State	Purpose									Total
	Common schools	Other schools	Other institutions	Railroads	Wagon roads	Canals and rivers	Miscellaneous improvements not specified[1]	Swamp reclamation	Other purposes	
	Acres	*Acres*	*Acres*	*Acres*	*Acres*	*Acres*	*Acres*	*Acres*	*Acres*	*Acres*
Alabama	911,627	383,785	181	2,747,479		400,016	97,469	441,666	24,660	5,006,883
Alaska	106,000	112,064	1,000,000						103,351,187	104,569,251
Arizona	8,095,156	849,197	500,000						1,101,400	10,543,753
Arkansas	933,778	196,080		2,563,721			500,000	7,686,575	56,680	11,936,874
California	5,534,293	196,080					500,000	2,193,966	400,768	8,825,107
Colorado	3,585,618	138,040	32,000				500,000		115,946	4,471,604
Connecticut		120,000								180,000
Delaware		90,000								90,000
Florida	975,307	182,160		2,218,705			500,000	20,331,617	5,120	24,212,909
Georgia		270,000								270,000
Idaho	2,963,698	386,686	250,000			324,263	209,086	1,460,164	654,064	4,254,448
Illinois	996,320	526,080		2,595,133	170,560	1,480,409		1,259,271	123,589	6,234,655
Indiana	668,378	436,080				321,342	500,000	1,196,392	25,600	4,040,518
Iowa	1,000,679	286,080		4,706,945			500,000		49,824	8,081,262
Kansas	2,907,520	151,270	127	4,176,329			500,000		59,423	7,794,669
Kentucky		330,000	24,607							354,607
Louisiana	807,271	256,292		373,037			500,000	9,504,476		11,441,096
Maine		210,000								210,000
Maryland		210,000								210,000
Massachusetts		360,000								360,000
Michigan	1,021,867	286,080		3,134,058	221,013	1,250,236	500,000	5,680,312	49,280	12,142,846
Minnesota	2,874,951	212,160		8,047,469			500,000	4,706,391	80,880	16,422,051
Mississippi	824,213	348,240		1,075,345			500,000	3,348,946	1,253	6,097,997
Missouri	1,221,813	376,080		1,837,968			500,000	3,432,521	48,640	7,417,022
Montana	5,198,258	388,721	100,000						276,339	5,963,338
Nebraska	2,730,951	136,080	32,000				500,000		89,680	3,458,711
Nevada	2,061,967	136,080	12,800				500,440		14,379	2,725,666
New Hampshire		150,000								150,000
New Jersey		210,000								210,000
New Mexico	8,711,324	1,346,546	750,000			100,000			1,886,848	12,794,718
New York		990,000								990,000
North Carolina		270,000								270,000
North Dakota	2,495,396	336,080	250,000						82,076	3,163,552
Ohio	724,266	699,120			80,774	1,204,114		26,372	24,216	2,728,862
Oklahoma	1,375,000	1,050,000	670,760							3,095,760
Oregon	3,399,360	136,165			2,583,890		500,000	286,108	127,324	7,032,847
Pennsylvania		780,000								780,000
Rhode Island		120,000								120,000

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TABLE 4.—*Grants to States, 1803-1972*—Continued

State	Purpose									Total
	Common schools	Other schools	Other institutions	Railroads	Wagon roads	Canals and rivers	Miscellaneous improvements (not specified)	Swamp reclamation	Other purposes	
	Acres	*Acres*	*Acres*	*Acres*	*Acres*	*Acres*	*Acres*	*Acres*	*Acres*	*Acres*
South Carolina		180,000								180,000
South Dakota	2,733,084	366,080	250,640						85,569	3,435,373
Tennessee		300,000								300,000
Texas		180,000								180,000
Utah	5,844,196	556,141	500,160						601,240	7,501,737
Vermont		150,000								150,000
Virginia		300,000								300,000
Washington	2,376,391	336,080	200,000						132,000	3,044,471
West Virginia		150,000								150,000
Wisconsin	982,329	332,160		3,562,322	302,931	1,022,349	500,000	3,361,283	26,430	10,179,804
Wyoming	3,470,009	136,080	420,000						316,431	4,342,520
Total	77,629,220	16,707,787	4,993,275	37,128,531	3,359,188	6,102,749	7,806,995	64,916,260	109,780,866	328,424,871

APPENDIX D

INVENTORY OF LANDS HELD IN TRUST BY THE STATE LAND DEPARTMENT - SURFACE ACREAGE

	SCHOOLS AND INSTITUTIONS	TRUST LANDS GRANTED AND/OR ACQUIRED	INDEMNITY BASE LANDS NOT YET SELECTED		LANDS ON APPLICATION FOR INDEMNITY LIEU EXCHANGE AND/OR APPROVED FOR EXCHANGE		LAND OF UNDETERMINED OWNERSHIP	TITLE VESTED IN TRUST	NET GAIN OR LOSS INDEMNITY LIEU AND MISCELLANEOUS EXCHANGES	NET GAIN OR LOSS THROUGH TAYLOR EXCHANGES	TRUST LANDS AFTER SELECTIONS AND EXCHANGES
			OUTSIDE FOREST	INSIDE FOREST	OUTSIDE FOREST	INSIDE FOREST					
A 49	University	200,000.00						200,000.00	6.00	2,489.78	202,495.78
B 09	Legislative, Executive and Judicial Buildings	100,000.00						100,000.00	(6.96)	19.37	100,012.41
C 24	Penitentiary	100,000.00						100,000.00		(4.50)	99,995.50
D 06	Asylum for the Insane	100,000.00						100,000.00	1.88	(3.71)	99,998.17
E 40	School and Asylum for the Deaf, Dumb, Blind	100,000.00						100,000.00			100,000.00
F 15	Miners Hospital for Disabled Miners	50,000.00						50,000.00		1.20	50,001.20
G 21	Normal School	200,000.00						200,000.00		(10.95)	199,989.05
H 46	State Charitable, Penal and Reformatory	100,000.00						100,000.00			100,000.00
I 03	Agricultural and Mechanical Colleges	150,000.00						150,000.00		80.08	150,080.08
J 43	School of Mines	150,000.00						150,000.00		(31.21)	149,968.79
K 12	Military Institutes	100,000.00						100,000.00		(.52)	99,999.48
L 53	County Bonds	1,000,000.00						1,000,000.00		59.28	1,000,059.28
M 15	Miners Hospital for Disabled Miners	50,000.00						50,000.00		4,950.85	54,950.85
U 50	University of Arizona (Act of 2/18/91)	46,080.00						46,080.00	3,459.04	17,543.52	67,112.56
S 30	Common Schools (Original Grant)	8,334,952.00	(5,957.70)	(138,840.94)	(1,003.69)	(26,976.05)	(5,793.44)	8,156,380.18	(4,288,273.72)	(1,249,731.07)	2,620,375.39
N 31	Common Schools by Selections and Exchanges		(176.46)					(176.46)	4,289,397.83	1,258,771.44	5,547,992.83
	Territorial Prison	2,337.83						2,337.83	(38.48)		2,299.35
76	Cactus Gardens	2,876.71						2,876.71			2,876.71
TOTAL SCHOOL AND INSTITUTIONAL ACREAGE		10,786,246.54	(6,134.16)	(138,840.94)	(1,003.69)	(26,976.05)	(5,793.44)	10,607,498.26	6,575.81	34,133.56	10,648,207.63
GENERAL FUND											
58	Arizona Land Settlement	948.93						948.93			948.93
60	Farm Loan	22,237.77						22,237.77			22,237.77
64	Papago Park	1,185.14						1,185.14			1,185.14
65	Navigable Stream Beds	951.88						951.88			951.88
66	Non-Navigable Stream Beds	501.22						501.22			501.22
70	Special Grants - Airfields	6,670.64						6,670.64		(400.00)	6,270.64
80	Individual Grants - Airport Purposes	640.00						640.00			640.00
81	Lands Held in Trust - other State agencies	490.33						490.33			490.33
83	Lands Deeded to State Land Dept. as Trustee	161.00						161.00			161.00
TOTAL GENERAL FUND ACREAGE		33,786.91						33,786.91		(400.00)	33,386.91
GRAND TOTAL ACREAGE		10,820,033.45	(6,134.16)	(138,840.94)	(1,003.69)	(26,976.05)	(5,793.44)	10,641,285.17	6,575.81	33,733.56	10,681,594.54